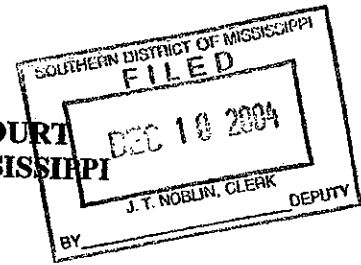


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



OLIVIA Y., By and through  
Her Next Friend, James D. Johnson, et al.

PLAINTIFFS

vs.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, As Governor of the State of  
Mississippi; DONALD TAYLOR, as Executive Director  
of the Department of Human Services; and BILLY MANGOLD,  
as Director of the Division of Children's Services

DEFENDANTS

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ANSWER AND DEFENSES TO AMENDED COMPLAINT

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COME NOW, Defendants Haley Barbour, as Governor of the State of Mississippi; Donald Taylor, as Executive Director of the Department of Human Services; and Billy Mangold, as Director of the Division of Children's Services, by and through counsel of record, and file this their Answer and Defenses to Plaintiffs' Amended Complaint as follows:

**FIRST DEFENSE**

The Amended Complaint fails to state claims against Defendants upon which relief can be granted.

**SECOND DEFENSE**

Defendants answer the Amended Complaint, paragraph by paragraph, as follows:

1-10. The allegations in Paragraphs 1-10 are Plaintiffs' characterizations of facts and conclusions of law to which no response is required. If otherwise construed, they are denied.

11. Admitted.

12. Admitted.



13-26. The Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraphs 13 through 26, and therefore they are denied.

27. Defendants admit that Haley Barbour is the Governor of Mississippi and that his business address is P.O. Box 139, Jackson, Mississippi, 39205. The remaining allegations in Paragraph 27 are Plaintiffs' characterizations of facts and conclusions of law to which no response is required. If otherwise construed, they are denied.

28. Defendants admit that Donald Taylor is the Executive Director of the Mississippi Department of Human Services and that his business address is 750 North State Street, Jackson, Mississippi, 39202. The remaining allegations in Paragraph 28 are Plaintiffs' characterizations of facts and conclusions of law to which no response is required. If otherwise construed, they are denied.

29. Defendants admit that Billy Mangold is the Director of the Mississippi Department of Human Services' Division of Family and Children's Services and that his business address is 750 North State Street, Jackson, Mississippi, 39202. The remaining allegations in Paragraph 29 are Plaintiffs' characterizations of facts and conclusions of law to which no response is required. If otherwise construed, they are denied.

30. Denied.

31. Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraph 31, and therefore they are denied.

32. Denied.

33. Denied.

34. Denied.

35. The allegations of Paragraph 35 are not directed toward Defendants and therefore require no response by Defendants; however, if otherwise construed, the allegations of Paragraph 35 are denied.

36. Denied.

37-42. The allegations in Paragraphs 37 through 42 are Plaintiffs' characterizations of facts and conclusions of law to which no response is required. If otherwise construed, they are denied.

43-49. Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraphs 43 through 49, and therefore they are denied.

50. Denied.

51-64. Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraphs 51-64, and therefore they are denied.

65. Denied.

66-74. The claims set forth in these paragraphs have been dismissed.

75-81. Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraphs 75 through 81, and therefore they are denied.

82. Denied.

83-95. Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraph 83, and therefore they are denied.

96. Denied.

97-105. Defendants are without knowledge or information sufficient as to form a belief as to the truth of the averments of Paragraph 97 through 105, and therefore they are denied.

106. Denied.

107-113. The claims set forth in these paragraphs have been dismissed.

114-192. The allegations in Paragraphs 114 through 192 are Plaintiffs' characterizations of facts and conclusions of law to which no response is required. If otherwise construed, they are denied.

193-208. All causes of action set forth in Paragraphs 193 through 208 were dismissed by this Court's November 18, 2004 Order, except for the substantive due process claims of the in-custody Plaintiffs alleged in the Sixth Cause of Action in Paragraphs 203 and 204 which are hereby denied. Therefore, no further response is required by Defendants; however, if otherwise construed, the allegations of Paragraphs 193-208 are denied.

The allegations of the final paragraphs beginning "WHEREFORE," including sub-parts A-G are denied, and Defendants deny that Plaintiffs are entitled to the relief requested, or any relief.

#### **THIRD DEFENSE**

Some or all of the alleged injuries and damages sustained by the Plaintiffs were caused or contributed to by others not under the direction or control of the Defendants.

#### **FOURTH DEFENSE**

The conduct of Defendants at all relevant times did not deprive the Plaintiffs of any substantive due process rights.

#### **FIFTH DEFENSE**

At no time did Defendants act with deliberate indifference for the plaintiffs under the existing circumstances.

#### **SIXTH DEFENSE**

Some or all of the Plaintiffs lack standing to maintain this action.

**SEVENTH DEFENSE**

Defendants plead all applicable statutes of limitation.

**EIGHTH DEFENSE**

Defendants plead sovereign immunity, absolute immunity, and qualified immunity.

**NINTH DEFENSE**

At all relevant times, Defendants were acting within the course and scope of their official capacities.

**TENTH DEFENSE**

Defendants plead all defenses available to them under the Mississippi Tort Claims Act, MISS. CODE ANN. §11-46-1, *et seq.*

**ELEVENTH DEFENSE**

These Defendants necessarily rely upon the availability of funds by legislative action and are dependent upon necessary legislative appropriations. Defendants have no ability to force the Mississippi Legislature to appropriate funds and they respectfully submit that this Court cannot compel the Mississippi Legislature to appropriate by legislative action the funds necessary to effectively operate and manage the child welfare system of the State of Mississippi.

**TWELFTH DEFENSE**

The Youth Courts of the State of Mississippi are the duly constituted entities to address any justiciable controversies or alleged violations of the constitutional rights or claims for equitable relief by any of the Plaintiffs. Any takeover of the State's responsibilities would violate the Tenth Amendment to the United States Constitution, and would be prohibited under applicable abstention doctrines.

**THIRTEENTH DEFENSE**

Any court order entered in this case requiring the appropriation or use of funds to operate the child welfare system of the State violates the separation of powers doctrine and constitutes a judicial infringement of legislative powers.

Respectfully submitted,

**HALEY BARBOUR, as Governor of the State of  
Mississippi; DONALD TAYLOR, as Executive Director  
of the Department of Human Services; and  
BILLY MANGOLD as Director of the Division of  
Family and Children's Services**

**McGlinchey Stafford, PLLC**

  
By: Betty A. Mallett (MSB #8867)

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**CERTIFICATE OF SERVICE**

I, Betty A. Mallett, do hereby certify that I have this day served a copy of the foregoing on counsel of record by United States Mail, postage prepaid to:

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**SO CERTIFIED**, this the 10th day of December, 2004.

  
Betty A. Mallett

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